

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-034-11-1-5-82286-15  
45-034-12-1-5-20125-15  
**Petitioners:** William Roux & Alison L. Frak  
**Respondent:** Lake County Assessor  
**Parcel:** 45-11-07-327-012.000-034  
**Assessment Years:** 2011 & 2012

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioners initiated the 2011 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on June 7, 2012. The PTABOA failed to hold a hearing within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioners filed a Form 131 petition directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
2. It is not clear when Petitioners initiated the 2012 appeal with the PTABOA, but the PTABOA issued notice of its determination for that year on May 15, 2015. Petitioners then timely filed a Form 131 petition with the Board for that year.
3. Petitioners elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on October 3, 2016. Neither the ALJ nor the Board inspected the property.
5. Peter Karagan, tax representative, was sworn as a witness for Petitioners. Lake County Hearing Officer Robert Metz was sworn as a witness for Respondent.

**Facts**

6. The subject property is a townhouse located at 1753 Autumn Court in Dyer.
7. Respondent determined the following assessments for the parcel under appeal:

Year	Land	Improvements	Total
2011	\$35,000	\$105,500	\$140,500
2012	\$35,000	\$ 99,100	\$134,100 <sup>1</sup>

8. Petitioners requested a total assessed value of \$110,000 for each year at issue.

### Record

9. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1:	Property record card (“PRC”)
Petitioner Exhibit 2:	Greater Northwest Indiana Association of Realtors (“GNIAR”) Comparative Market Analysis (“CMA”) Report (¼ mile radius)
Petitioner Exhibit 3:	GNIAR CMA (½ mile radius)
Petitioner Exhibit 4:	GNIAR sales information for the subject property
Petitioner Exhibit 5:	Title Insurance Schedule A
Petitioner Exhibit 6:	Closing settlement statement
Petitioner Exhibit 7:	Property tax statement
Petitioner Exhibit 8:	Form 131 petition
Petitioner Exhibit 9:	Copy of Indiana Code § 6-1.1-4-39
Petitioner Exhibit 10:	Assessor’s gross rent multiplier (“GRM”) average
Petitioner Exhibit 11:	Reconstruction of income statement
Petitioner Exhibit 12:	Schedule E Returns for 2010-2012
Petitioner Exhibit 13:	GNIAR rental rates with CMA
Respondent Exhibit 1:	PRC
Respondent Exhibit 2:	CMA Report
Board Exhibit A:	Form 131 petitions with attachments
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

<sup>1</sup> At the hearing, Mr. Metz testified that the assessed value for 2012 was \$35,000 for the land and \$99,100 for the improvements for a total of \$134,100. Those amounts also appear on the PRC submitted as Respondent Exhibit 1. But on the Form 115 included as part of Board Exhibit 1 and on the Form 131 submitted by Petitioner the amounts for 2012 are \$35,000 for the land and \$105,500 for the improvements for a total of \$140,500.

c. These Findings and Conclusions.

**Burden**

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that an assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value decreased from \$147,600 in 2010 to \$140,500 in 2011. Petitioners, therefore, had the burden of proof for 2011. Assigning the burden for 2012 will depend on the final determination for 2011.

**Summary of Parties' Contentions**

15. Petitioners' case:
  - a. Petitioners purchased the property for \$102,000 on July 13, 2009, but admit that sale was not conducted in an arm's-length transaction. The property included real estate that was owned by a bank at the time. *Karagan testimony; Pet'r Exs. 4-6.*
  - b. Petitioners initially contend that the property is over-assessed based on purportedly comparable sales. Petitioners presented CMA reports indicating that the median

value of twelve similar properties that sold during the relevant valuation period was \$121,950. *Karagan testimony; Pet'r Exs. 2 and 3.*

- c. Nevertheless, Petitioners point out that Ind. Code § 6-1.1-4-39 states that the GRM is the preferred method of valuing property that has at least one and not more than four rental units. They claim the GRM method should be used here to value the subject property and not the sales comparison approach. *Karagan testimony; Pet'r Ex. 9.*
- d. Petitioners researched eight properties and allegedly developed an average GRM of 110. While the properties may not all be the same size as the subject property, Petitioners contend that their GRM is based on the leases and sale prices of comparable properties. Applying a GRM of 110 to the current monthly rent of \$985 that the owners receive results in a value of approximately \$110,000. Petitioners contend that value is more accurate. *Karagan testimony; Pet'r Ex. 13.*
- e. Petitioners contend that four of Respondent's purportedly comparable sales are outside of the relevant valuation period. Further, 1087 Flagstone, 1755 Autumn Court, and 919 Flagstone were on the market between 196 days and 267 days. Petitioners contend that such time on the market is excessive if the properties were accurately priced. *Karagan testimony; Resp't Ex. 2.*

16. Respondent's case:

- a. Respondent analyzed 11 purportedly comparable sales that occurred between 2010 and 2012, claiming those sales are representative of the appeals at issue. Respondent contends that the properties were all the same size as the subject property, were all advertised in the MLS, and all sold within what Respondent determined to be a reasonable marketing time. The resulting median value was approximately \$131,000, which is what Respondent feels the value should be. *Metz testimony; Resp't Ex. 2.*
- b. Respondent contends some of the sales on Petitioners' Exhibits 2 and 3 are REO sales, which would explain the lower median value. *Metz testimony; Pet'r Ex. 2.*
- c. Respondent contends Petitioners' representative is confusing the difference between a GRM method and a capitalization method, which would not be used on a property with one to four units. Respondent claims that the preferred method of valuing a single-family residence is the market data approach. *Metz testimony.*
- d. Respondent questions the validity of the calculations in Petitioners' Exhibit 13 because they blended expired listings, current listings, and sold properties. Further, there is nothing to show that the properties are similar. For instance, some of the properties are much larger than the subject property and some are much smaller. As a result, Respondent contends that there is no supporting evidence for Petitioners' GRM calculation. *Metz testimony; Pet'r Ex. 13.*

## ANALYSIS

17. Petitioners failed to make a prima facie case for a change in assessment. The Board reached that decision for the following reasons:
- a. Real property is assessed based on its “true tax value”, which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
  - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).
  - c. There is a separate statute, however, regarding the valuation of certain rental properties such as the one at issue. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the GRM method “is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units...”

### 2011 Assessment

- d. As stated above, Petitioners had the burden of proof for 2011. Petitioners offered a list of twelve sales that occurred during the relevant time frame. The properties are the same size and approximately the same age. The median sale price for those properties was \$121,950. In making this argument, Petitioners essentially relied on a sales comparison approach to establish market value-in-use. See 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales-comparison approach relies on “sales of comparable improved properties and adjust the selling prices to reflect the subject property’s total value.”); *see also Long*, 821 N.E.2d 466, 469.
- e. To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to

another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- f. Here, Petitioners failed to address any differences between the subject property and the purportedly comparable properties. While the properties appear to be similar in size and age, Petitioners failed to show if the properties were similarly located, if the complexes where the properties are located contained the same amenities, if the same homeowners' association ("HOA") fees applied, or if they were condominiums or townhouses. Consequently, Petitioners failed to make a meaningful comparison of the purportedly comparable properties to the subject property.
- g. Petitioners also contend that the property is a rental property and should be assessed using the GRM method. A GRM is derived by dividing the sale price of a property by its gross monthly rent and the development of such requires a volume of sales and rental data. A further assumption is that the subject property and the comparable properties are subject to the same market influences, are competitive with one another, have similar operating expenses, and have similar amenities, as well as similar overall utility. Mr. Karagan pointed to a list of eight purportedly comparable properties and contends that data supports a GRM of 110.
- h. As is the case when comparing properties using the sales-comparison approach, conclusory statements to support a GRM analysis (e.g., stating that properties are "similar" or "comparable") are not sufficient. *Long*, 821 N.E.2d at 470. As discussed previously, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Again, Mr. Karagan made no meaningful comparison of the properties and failed to account for any differences in size, age, style, and amenities. Further, only two of the eight properties are situated in Dyer where the subject property is located. Mr. Karagan also did not exclusively use sale prices to calculate the GRM—for some properties he included expired listing prices or assessed values.
- i. Consequently, the Board finds that Petitioners' GRM analysis is not credible.
- j. Petitioners failed to make a prima facie case that the subject property was overvalued for 2011. Where Petitioners did not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-22 (Ind. Tax Ct. 2003).
- k. Respondent, however, offered testimony that the 2011 assessed value should be \$131,000. This value is lower than the original assessed value of \$140,500. The

Board views this testimony as a concession by Respondent that the assessment should be reduced to that level. Thus, without ruling on the probative value of Respondent's evidence, the Board accepts the concession that the 2011 assessment should be reduced to \$131,000.

### 2012 Assessment

- l. The 2011 assessment was reduced to \$131,000 and the 2012 assessment was \$134,100. Because the 2011 assessment was reduced as a result of an appeal, any increase in the 2012 assessed value shifts the burden of proof to Respondent. Ind. Code § 6-1.1-15-17.2(d). Respondent did not offer any evidence to prove the original assessed value for 2012 is correct.
- m. The Petitioners had the burden to prove any value less than \$131,000. But they just presented the same evidence for 2012 as they did for 2011. For the same reasons that were discussed with regard to Petitioners' 2011 proposed value, the Board finds Petitioners did not provide credible evidence to support their proposed value for 2012.

### **CONCLUSION**

18. While the GRM method is the preferred method for this type of rental property, the Board finds that explanation of the value derived using the GRM is not probative for this case. Similarly, Petitioners' sales-comparison analyses was also not probative of the true tax value. Petitioners failed to make a prima facie case for a reduction in the 2011 assessed value. Nevertheless, Respondent conceded the 2011 value should be \$131,000.
19. Respondent had the burden of proof for 2012, but did not prove the original valuation was correct. Petitioners also failed to present probative evidence to prove the 2012 value they claimed. Therefore, the 2012 assessed value reverts to our determination for the previous year.

### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2011 and 2012 assessed values must each be changed to \$131,000.

ISSUED: January 27, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.